

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* TONY M. BREWER and GREGORY S. PALMER

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Appeal 2006-3220  
Application 09/521,827  
Technology Center 2100

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Decided: March 20, 2007

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Before JOSEPH L. DIXON, HOWARD B. BLANKENSHIP,  
and ALLEN R. MACDONALD, *Administrative Patent Judges*.  
DIXON, *Administrative Patent Judge*.

**DECISION ON APPEAL**

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1-24, which are all of the claims pending in this application.

We REVERSE.

## BACKGROUND

Appellants' invention relates to data transmission over a network and in particular to efficiently monitor such data transmission over an unreliable network. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. A method for executing a data operative transaction in a network having a source site and a destination site, the method comprising the steps of:

transmitting an initial transaction request message from said source site to said destination site;

receiving said transaction request message at said destination site;

generating a data entry related to the progress of said data operative transaction in a destination database; and

preserving said association of said data entry with said data operative transaction in said destination database so long as said data operative transaction is active in said network.

## PRIOR ART

The prior art references of record relied upon by the Examiner in rejecting the appealed claims are:

Jalili	US 5,423,042	Jun. 06, 1995
Lee	US 5,774,479	Jun. 30, 1998
Rosborough	US 5,838,920	Nov. 17, 1998
Forman	US 6,178,449	Jan. 23, 2001
		(Filed Nov. 26, 1997)
Chlan	US 6,385,642	May 07, 2002
		(Filed Apr. 19, 1999)

## REJECTIONS

Claims 1, 2, 4, 14-16, and 20-24 are rejected under 35 U.S.C. § 102(b) as being anticipated by Rosborough. Claims 3 and 7-9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Rosborough as applied to claims 1, 2, and 4 above, and further in view of Chlan. Claims 5, 6, and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Rosborough as applied to claims 1 and 14 above, and further in view of Lee. Claims 10-12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Rosborough as applied to claims 1, 2, and 4 above, and further in view of Jalili. Claims 13, 17, and 18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Rosborough as applied to claims 1, 14, and 16 above, and further in view of Forman.

Rather than reiterate the conflicting viewpoints advanced by the Examiner and the Appellants regarding the above-noted rejections, we make reference to the Examiner's Answer (mailed Apr. 5, 2006) for the reasoning in support of the rejections, and to Appellants' Brief (filed Jan. 30, 2006) and Reply Brief (filed Jun. 5, 2006) for the arguments thereagainst.

## OPINION

In reaching our decision in this appeal, we have given careful consideration to Appellants' Specification and claims, to the applied prior art references, and to the respective positions articulated by Appellants and the Examiner. As a consequence of our review, we make the determinations that follow.

We limit our discussion to rejection under 35 U.S.C. § 102 since this addresses all of the independent claims, and we find the Examiner's rejection thereof deficient.

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention. *RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). In other words, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991).

The Examiner, in our view, contorts the teachings of Rosborough as follows:

Claim 1 (P. 5) is drawn to a network having a source site and a destination site. The examiner interprets the term "site" to encompass an area of one or more computer devices, including numerous computer elements separated either logically or physically. In other words, the examiner considers the source site to be the client computer, and considers the destination site to be the server computer, recording device, and monitoring computer, wherein the server computer receives the transaction request message from the client, performs the transaction, and transmits a response to the request message, while the recording device acts as part of the server system for the purposes of monitoring.

As for issues regarding the proximity, i.e. direct connection between the recorder and server devices, the purpose is to show how both may thus be combined into a logical entity, and therefore fulfill the definition of belonging to a single site. The purpose is also to show that one of ordinary skill in the art would find it obvious to combine them into a single physical entity, as they currently act as a single logical entity. (Answer 9).

While the Examiner's position/interpretation may have merit in some different interpretations, we do not find that the Examiner is being reasonable in the instant application of the prior art to interpret the remainder of the system of Rosborough including intermediary equipment as part of a destination site with respect to present examination. With the Examiner's interpretation of the teachings of Rosborough, the intermediary and the server computer would receive the service packets communicated between the source and destination nodes as identified by Rosborough. Rosborough discloses that the monitoring and recording are done "non-intrusively/non-invasively" in the abstract. Furthermore, as disclosed in Figure 2 of Rosborough, the recording devices and monitoring computer are distributed amongst the plurality of server computers, which then makes the Examiner's interpretation even more unreasonable, in our view, since the plural destination nodes would not all have the recording and monitoring computer associated with them as defined by the Examiner.

Here, we cannot agree with the Examiner's characterization of the teachings of Rosborough under anticipation. Therefore, the Examiner has not shown that Rosborough teaches all of the claimed limitations, and we will not sustain the rejection of independent claims 1, 14, 20, and 24 and dependent claims 2, 4, 15, 16, 21-23.

With respect to the Examiner's rejections under 35 U.S.C. § 103, the Examiner has not identified how the teachings of Chlan, Lee, Jalili and Forman remedy the above noted deficiency in Rosborough with respect to dependent claims 3, 5-13, and 17-19. Therefore, the Examiner has not shown that the combined teachings would have taught or suggested all of the

Appeal 2006-3220  
Application 09/521,827

claimed limitations, and we will not sustain the rejection of these dependent claims.

### CONCLUSION

To summarize, we have reversed all of the rejections under 35 U.S.C. §§ 102 and 103.

REVERSED

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